longer he travels the more strongly does he feel he is in a stream bearing him to his preordained destination; and in him we have what we please to call the confirmed criminal. Society's work now is to take him from the current before it grasps him too fast. To do this we must know him. We must know as far as we may his very being, his soul, his manner of thought. We must know how he is physically. We must know the things which make him what he is. We must know those who influence his life; his parents, his friends, his teachers, his employers.

"The causes which lead the children into offenses against the law and tend to make them criminal are as multitudinous as the conditions and environments which surround them. The cry is often heard when a boy goes wrong, 'It is the parent's fault.' Often it is. But the work of the state in such a case is to better the parent that the child may be bettered; to deal sympathetically or severely, as necessity may require, with the delinquent or unfortunate father or mother; to check dissipation, to prevent separation of spouses, to aid the distressed, in a word, to build and foster the home that to its young inmates it may be an influence for good. This is constructive work. It requires never-ceasing attention upon the individual case, as the erection of a building needs the supervision of the architect until it is completed.

"Creating conditions means, among other things, that society must guard his health; that the state must enact laws which prevent his young life being used as a tool; that he shall not be forced, under the guise of business, to serve the wants of libertines; that he shall not be compelled to give the time needed for schooling or for rest to the demands of employers; that he shall not be permitted to gather with his fellows unattended in places of amusement during the night hours and in promiscuous company; that he shall not be offered or allowed the temptations of the saloon; that he shall not be given the chance to hear the cry of the streets. In these matters the state may and must act positively.

"So long as we must live in crowds we must enact laws which will protect children from the dangers of crowds. No child should be permitted to visit places of amusement unaccompanied by some proper guardian. Let us realize thoroughly that a tendency to crime has a cause, and that by the removal of the cause the making of a criminal may be prevented; and let us use our efforts to the end that every influence of the state may be used to work upon the cause." J. W. G.

The Alternative Death Penalty in Nevada Criticized.—The editor of the *Central Law Journal* in a recent article criticizes the Nevada statute which allows condemned persons to choose one of two modes for the carrying into effect of the death sentence. (See this *Journal*, May, 1911, pp. 91-92.) The constitutionality of the statute, says the editor of the *Journal*, is doubtful, and in additional it is repugnant to the morality of the common law which treats suicide as a *felo de se*, punishable by forfeiture of estate.

"In *McMahon v. State*, 53 So. 89," says the editor, "the Alabama Supreme Court affirmed the conviction of murder of one whose defense was that the deceased took his own life. The trial court instructed that 'if the death was the result of preconcert * * * between the men, that each take his own life, then the survivor would be guilty of murder in the first or second degree.' This proposition was held to involve the question whether suicide

was a felony. It was said: 'At common law self-murder was a felony, but since with us no forfeiture of estate penalizes the felon, and since the dead cannot be punished, no penalty can be inflicted on the self-destroyer. But collateral consequences may, and do, upon occasion, depend upon the feloniousness of self-murder. * * * That intentional self-destruction by one without avoiding mental distemper is *felo de se* is a generally recognized criminal doctrine.'

"The Alabama decision is wholesome, just as every implication to be drawn from the Nevada statute is pernicious, consistent, however, we may say, with the tenderness of divorce legislation for the gaily bedecked and bedizened, who seek its hospitable doors. But, of course, the supposedly sufficient answer to all of this is that, death impending, there is no choice in regard to life at all, and the selection of the means of death is not the choosing of death. This may be true . Let us take the alternative proposed. The felon will have choice of death by hanging or death by poison. If he elects poison, he is supplied with hydrochloric acid sufficient in quantity to cause instantaneous death. If he makes no choice, he is hung. It is well known that hanging may not produce instantaneous death. Indeed, it has been known to prove abortive and always it has been the custom for experts to say when death has supervened before the body is cut down. Therefore, when a state, which looks upon hanging as a civilized mode of execution and invites one sentenced to death, to kill himself more expeditiously than the state will kill him, it invites him to self-murder. Suppose that a state extended choice in this matter by providing death by torture, slow but absolutely certain to the end intended. Would not a man having the liberty of choice be taking his own life, if he forestalls the appreciable period he would live during the torture?

"Among Christians generally it is regarded as heinous in morals that one should shorten his own life to escape from trouble. There may be and undoubtedly are some who do not thus regard self-destruction. They conceive that their lives belong to them to do with whatsoever they will. But a man who so believes seems to us bereft of a proper sense of responsibility to others.

"But whichsoever view is correct, no state has the right to treat with contempt the conscientious scruple, that no one should compass his own death before allotted time to die. This assertion is not met by saying, that those who thus believe should refuse to elect.

"Furthermore, it may be asked, is there any mercifulness in the privilege of choice? Why should the state hang before a doomed man's eyes what would but add to the misery of his situation, and correspondingly afflict those who would weep over his death? Any law smacks of barbarity which may tend to interfere with the resignation the condemned and his relatives may seek in such an extremity. The sentiment behind it is maudlin in part and excessively materialistic as to the rest.

"Is there, or not, a serious question here of the validity of such legislation? A judgment may in a civil suit give alternative relief, but it will hardly be contended that a sentence may inflict alternative punishment, except that in misdemeanor, imprisonment may be the alternative of refusal to pay a fine. This, however, is not a real alternative. It presupposes inability to pay the fine. But in a sentence of death the physical pain involved in its being carried into

effect is part and parcel of the sentence, as is also whatever mental suffering is endured. If one method involves less of either than the other, there is an alternative that suggests a want of uniformity in the sentence of death. If there is no material difference in the modes of infliction, then why would the law be enacted? The very enactment of the law presupposes that it speaks regarding as matter of substance and not of form." J. W. G.

Should the Accused Be Forced to Testify in His Own Case?—Hon. R. A. Burch, justice of the Supreme Court of Kansas, in a recent address before the State Association of County Attorneys of Kansas advocated a change in the criminal code so as to require accused persons to testify in regard to the facts of any charge against them. Among other things, he said:

"Attention has been called to the fact that laws and institutions suffer in the estimation of the people because, having been established for conditions now outgrown, they resist their own improvement too long and are in adequate to meet the needs which social progress has evolved. A single illustration from the criminal law may be considered. Many a guilty man escapes punishment, to the confusion and humiliation of the law and order forces, because he can not be required to testify and because as a corollary, his failure to testify can not be considered to his prejudice. The prosecution must disclose everything to him. The names of all known material witnesses for the state must be indorsed on the indictment or information at the time it is filed. The accused then sits by until the last item of evidence against him has been introduced at the trial when he springs a story carefully prepared to suit the exigencies of the case, or, if he chooses, remains silent while the court in solemn phrase instructs the jury that he is presumed to be innocent of every element of the offense charged against him and that no inference can be drawn from his failure to testify. The existing rules had their origin in humane efforts to protect unhappy prisoners who had no counsel, who could not testify at the trial and who could not appeal from star chamber practices and from the barbarities of a penal system which is now regarded with feelings of horror. At the present time there is no valid reason why a person charged with crime should not be obliged by law to testify at any stage of the proceedings precisely the same as any other witness with knowledge of the facts."

Suggestions as to Trial Procedure.—In a recent article in the *Chicago Legal News,* Franklin A. Beecher lays down a number of propositions which, in his judgment, ought to govern in the procedure of a criminal trial. He says:

"Of all the departments of human knowledge, law is the least progressive. In many respects it still continues in the old trodden path of tradition, and any suggestion to deviate from the old beaten path is met with the argument that the old principles as established by the judges and jurists of the past are the best, because they were the result of that mysterious gift of legal lore and logic by which the law became the perfection of human reason, so that nothing is left for the modern judge and jurist to do but to follow in the path of the past. Trial procedure is very much the same today as it was in the sixteenth century. With few changes in evidence, especially relating to competency of witnesses, etc., the law of evidence has undergone comparatively few changes.